

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

| | | |
|----------------------|---|---------------------|
| SAMUEL TURNER POOLE, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | C.A. No. 99-635-SLR |
| |) | |
| STAN TAYLOR, and |) | |
| RAPHAEL WILLIAMS, |) | |
| |) | |
| Defendants. |) | |

**DEFENDANTS' MOTION TO SUPPLEMENT THEIR
PENDING SUMMARY JUDGMENT MOTION**

Defendants hereby move the Court for leave to supplement their pending motion for summary judgment on grounds that the present claim should be dismissed under the doctrine of claim preclusion. Defendant's motion for leave is supported by the reasons that follow:

1. Plaintiff filed this 42 U.S.C. § 1983 action on September 22, 1999, wherein he claims his Eighth Amendment rights were violated by the conditions of imprisonment. On the same day, September 22, 1999, plaintiff filed an earlier 42 U.S.C. § 1983 action (*Poole v. Taylor, et al*, C.A. No. 99-634-JJF [*"Poole I"*]) where he also claimed his Eighth Amendment rights were violated by the conditions of imprisonment.

2. On January 3, 2002, the Court dismissed both matters as frivolous under 28 U.S.C. § 1915(e)(2)(B)(i) and plaintiff appealed. However, unlike the present matter [*"Poole II"*] where the Court of Appeals vacated and remanded, the

Court of Appeals dismissed the appeal in *Poole I*. Finding that “Appellant’s Eighth Amendment claims premised on prisons conditions and inadequate medical care are dismissed under 28 U.S.C. § 1915(e)(2)(B)(i) because they do not amount to deliberate indifference to an excessive risk to health or safety or to a serious medical need.” (citations omitted) *Poole v. Stan Taylor*, C.A. No. 02-1384 (Order)(3rd Cir. November 20, 2002).

3. Defendants had asserted res judicata and collateral estoppel as an affirmative defense in their answer to plaintiff’s complaint. (D.I. 49) Accordingly, plaintiff was on notice of the preclusion defense and will not be prejudiced by defendants’ supplementation of their pending motion.

4. On January 30, 2006, defendant filed a motion for summary judgment and an Opening Brief. (D.I. 86, 87) Plaintiff has not yet filed a response to defendants’ motion and would not be prejudiced by defendants supplementing their pending motion.

WHEREFORE, defendants request the Court grant leave to supplement their pending motion for summary judgment.

Respectfully submitted,

STATE OF DELAWARE
DEPARTMENT OF JUSTICE

/s/ Marc P. Niedzielski

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DATED: July 28, 2006

**IN THE UNITED STATES DISTRICT COURT
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| Plaintiff, |) | |
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| STAN TAYLOR, and |) | |
| RAPHAEL WILLIAMS, |) | |
| |) | |
| Defendants. |) | |

ORDER

WHEREAS, defendants have moved for leave to supplement their pending motion for summary judgment; and,

WHEREAS, the Court has reviewed the papers filed in connection with this matter.

IT IS ORDERED this day of , 2006

that the motion is GRANTED for defendants to supplement their pending motion for summary judgment by filing and serving a supplemental opening brief within 20 days of this order. Plaintiff is to file and serve his response within 20 days upon receipt of defendants' supplementation.

Chief Judge for the U.S. District Court

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| |) | |
| |) | |
| Defendants. |) | |

CERTIFICATE OF SERVICE

The undersigned certifies that on the date indicated, he caused the attached document entitled Defendants' Motion to Supplement Their Pending Summary Judgment Motion to be served by U.S. Mail on the following individual:

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